

Notwithstanding, the Examiner withdraws the previous restriction of record and now alleges the present application contains claims directed to the following patentably distinct inventions:

Group I (claims 1-42)-- Process; and

Group II (claims 43-46)-- Device.

The Examiner requires Applicant to elect Group I or Group II and alleges they are distinct because “the claimed method comprising method steps (a-d) herein may be used broadly for other materials not necessary for the particular device or table herein.”

The Examiner further alleges Group I includes several patentably distinct species relating to “heat-sensitive active materials” and requires election thereof should Applicant elect Group I. While not specifically identified by the Examiner, Applicant divides the species of “heat-sensitive active materials” into the following Species:

Species I: Enzymes

Species II: Antibodies; and

Species III: Vitamins.

A. Election with Traverse.

The Examiner requires Applicant to elect a group of inventions and if applicable, a single species. Group I is directed to claims 1-42 and Species I is identified by Applicant to include the following claims:

Group I Species I: includes claims: 1-9 (identified as being generic by the Examiner), 11 and 13-41. In response to the Examiner's requirements, Applicant hereby elects Group I, Species I with traverse (claims 1-9, 11 and 13-41).

Applicant respectfully submits the Examiner has not established a proper basis for requiring restriction of Applicant's claims under 35 U.S.C. § 121 and respectfully traverses the requirement for the following reasons.

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and are either independent or distinct. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent and distinct inventions." (MPEP 803, emphasis added).

In the present Office Action the Examiner states: Group I and Group II are distinct because the claimed method steps (a-d) (e.g., claim 1) may be used broadly for other materials not necessary for the particular device. Applicant respectfully disagrees.

Claim 1 (Group I) recites a method for adding a heat-sensitive active material to a composition including "providing a **tablet including the active, the tablet being coated.**" whereas claim 44 (Group II) recites "a **tablet** for use in converting lactose to another substance, the tablet comprising a **lactose-converting substance and an exterior coating.**"

It is respectfully submitted that the method of claim 1 cannot be practiced with another "materially different" product (within the scope of Applicant's disclosure) as alleged by the Examiner, nor can the tablet of claim 44 be used to practice another "materially different

process.” Moreover, mere statements of conclusion are insufficient to support a Restriction Requirement. See MPEP 803.01 (“Examiners must provide reasons and/or examples to support conclusions”).

For at least the foregoing reasons, Applicant respectfully submits that requirement for Restriction of Applicant’s claims between Group I and Group II is improper and must be withdrawn.

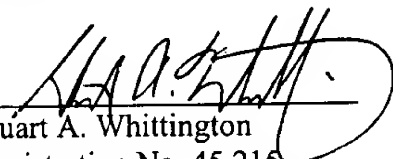
Additionally, with respect to election of species, Applicant only has identified three different species of heat-sensitive active materials, i.e., enzymes, antibodies and vitamins. 37 C.F.R. § 1.141 provides that a reasonable number of species may still be claimed in one application if the application also includes an allowable claim generic to all species. Applicant respectfully requests the Examiner to examine the generic claims on the merits before any determination of finality for the Species Restriction requirement is made.

B. Conclusion.

For the foregoing reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the requirement for restriction and examine all claims on the merits. If any concerns remain or arise which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to **Deposit Account No. 19-3878**.

Respectfully submitted,


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